IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL REVISION APPLICATION NO. 30 OF 2002.

Smt. Giana Lourdes D'Costa,
Alcon Estate, Block F, S/1,
Miramar, Panaji, Goa. ... Petitioner.

Versus

Smt. Beatrice Flaviana Lucy
D'Costa e Carvalho, r/o Dr.
Wolfango D'Silva Road, Opp.
Ashok Theatre, Panaji, Goa. ... Respondent.

Mr. S. Vales, Advocate for the Petitioner.

Mr. S.D. Lotlikar, Senior Advocate with Mr. A.D. Bhobe, Advocate for the Respondent.

Coram: P.V. HARDAS, J.

Date: 6th February 2003.

ORAL JUDGMENT.

By consent of parties, this Criminal Revision is taken up for final hearing at the stage of admission.

2. This Criminal Revision has been filed by the original complainant, being aggrieved by the Judgment of the Additional Sessions Judge, Panaji, in Criminal Revision Application No. 9 of 2002, dated 30th July 2002, whereby the learned Additional Sessions Judge had allowed the revision and had quashed the Order of the learned Judicial Magistrate, First Class, Panaji, dated 10th October 2001, issuing process against the present respondent for an offence punishable under Section 500 of the Indian Penal Code.

3. The brief facts as are necessary for the decision of this application are set out hereunder:-

The present petitioner had filed a private Criminal Case No.44/01/B, in the Court of the learned Judicial Magistrate, First Class, Panaji, against the present respondent, for an offence punishable under Section 500 of the Indian Penal Code. The learned trial Court, by its Order, dated 10th October 2001, had issued process against the present respondent. The present respondent, being aggrieved by the aforesaid Order, had filed Criminal Revision Application No. 9 of 2002, in the Court of the Additional Sessions Judge, Panaji. The learned Additional Sessions Judge, by the Judgment impugned in the present revision, had allowed the revision filed by the present respondent and had quashed the Order issuing process against her. The original complainant, therefore, has filed the present revision impugning the aforesaid Judgment.

4. The pivot of the prosecution under Section 500 of the Indian Penal Code is on the basis of a defamatory statement which was made by the present respondent in Special Civil Suit No. 238/95/A. The defamatory statement was that the husband of the present respondent was having illicit relations with the present petitioner, who is the sister-in-law of the present

respondent. Ultimately the suit came to be withdrawn on 26th August 1999. The learned Additional Sessions Judge has dealt with the challenge regarding the fact that the complaint filed before the Magistrate was beyond the period of limitation prescribed under Section 468 of the Code of Criminal Procedure. According to the learned Additional Sessions Judge, the period of limitation which is prescribed is three years. The complainant ought to have filed a criminal complaint within three years from the date of filing of the suit. The said suit was filed on 11th December 1995 whereas the complaint was filed on 19th March 2001. A bald statement has been made in the complaint that the complainant was shocked to read about the defamatory remarks made about her character and, therefore, filed the complaint. In the entire complaint and in the verification statement there is no reference to the date on which the complainant became aware of the defamatory statement made in the suit. Therefore, the provisions of Section 469 of the Code of Criminal Procedure also would not apply. During the pendency of the proceedings before the learned Magistrate, the complainant also did not move any application seeking condonation of delay.

5. The learned counsel appearing on behalf of the petitioner has invited my attention to clause (b) of Section 469 of the Code of Criminal Procedure. Clause

(b) lays down:-

> "(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier;"

On this basis it has been urged before me that the complainant became aware just before she applied for the certified copy and, therefore, the complaint filed before the Magistrate was not time barred. Mr. Lotlikar, the learned senior counsel appearing on behalf of the respondent/accused, has urged before me that there are no averments to this regard either in the complaint or in the verification statement. Nothing prevented the complainant from filing an application for condonation of delay.

6. A perusal of the complaint and the verification statement, which are annexed to the present petition, clearly disclose that the complainant had not stated on which day the complainant was aware about the defamatory statement made in the suit. The complainant, therefore, cannot derive any advantage from Clause (b) of Section 469 of the Code of Criminal Procedure to plead before this Court that she became aware about the commission of the offence on a particular day and, therefore, the complaint is within limitation. The complainant ought

to have laid a foundation in the complaint itself regarding the date on which the complainant derived knowledge about the commission of the offence. The complainant, therefore, ought to have established that the complaint was within limitation.

7. The learned counsel appearing on behalf of the petitioner has relied on the Judgment of the learned Single Judge of this High Court in **Padmakar Anant Bhagwat v. State of Maharashtra and others,** 1997 (1) All MR 204. The ratio of this Judgment is wholly inapplicable to the facts of the present case as in the complaint in the reported Judgment discloses the date of commission of offence and the date when the complainant therein derived knowledge and, therefore, on that basis, the learned Single Judge of this Court came to the conclusion that the offence was not barred by limitation. In fact, it was a prosecution under Section 409 of the Indian Penal Code and the learned Judge held that no limitation was prescribed for taking cognizance of an offence under Section 409 of the Indian Penal Code.

8. The learned counsel for the petitioner further relied upon another Judgment of this Court in **The State of Maharashtra v. P.D. Pujari,** 1979 Bom.C.R. 299.

The ratio of this Judgment also is wholly inapplicable to the facts of the present case. In the reported case the learned Single Judge held that Clauses (a), (b) and (c) of Sub-Section (1) of Section 469 of the Code of Criminal Procedure are disjunctive and indicate different points of limitation depending upon the facts of each case and Clause (a) cannot be taken as all pervasive in its application as it would render Clauses (b) and (c) meaningless and ineffective.

9. I have given my anxious consideration to the rival submissions made by the learned counsel for the parties. The petitioner has clearly failed to state the exact date on which she derived knowledge about the commission of the offence and, in such circumstances, the learned Additional Sessions Judge, was certainly justified in quashing the issuance of process as the complaint was itself barred by limitation. The complainant had also chosen not to file any application for condonation of delay before the learned Magistrate. The cognizance of the offence, which was beyond the prescribed period of limitation was, therefore, rightly quashed by the learned Additional Sessions Judge. The Order of the learned Additional Sessions Judge, therefore, does not require any interference and the Criminal Revision Application is, therefore, dismissed

with no order as to costs.

(P.V. HARDAS)
JUDGE.

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